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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,802	05/11/2001	Jeffrey A. Ruschke	8266-0592	7034

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EXAMINER

LUBY, MATTHEW D

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/853,802

Applicant(s)

RUSCHKE ET AL.

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 1943.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-43 is/are pending in the application.
- 4a) Of the above claim(s) 23-25, 27 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11, 30-33, 44 and 45 is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-22, 26, 29 and 34-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/20/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21, 22, 26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Abstract 08-317953, hereafter '953.

'953 disclose a propulsion system "configured" to move a patient support having a bed frame and a mattress, the propulsion system comprising: a propulsion device (Figures 24-28) "configured" to contact the floor to power movement of the patient support, a coupler configured to move between a coupled position coupling the propulsion device to the bed frame and an uncoupled position permitting movement of the propulsion device away from the bed frame (Figures 25-28), a vertically extending handler coupled to the coupler (Figures 26 & 28) and configured to move the coupler between the coupled and uncoupled positions, wherein the handle includes a handle portion positioned at a sufficient height above the floor to facilitate grasping of the handle portion by user to move the propulsion system about a care facility (Figures 26 & 28), wherein the coupler is hook shaped (Figure 25) and further comprising a plurality of wheels (Figure 26) configured to permit a user pushing on the handle to roll the propulsion system from one patient support to another (Figures 26 & 28); wherein the

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handle is substantially perpendicular to a horizontal plane of the bedframe when the coupler is in the coupled position (Figure 25 shows that the handle, 69, that, in the coupled position depicted in Figure 25, is substantially perpendicular to the horizontal plane of the bedframe).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-9, 12-15 and 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent 1,041,210, hereafter '210, in view of Kiebooms et al. (U.S. Pat. No. 5,5580,207).

All of Applicants' positively claimed limitations are clearly shown in the Figures of '210 except that the propulsion device has a pair of secondary wheels. Kiebooms et al. disclose that it is well known for a propulsion device that powers movement of a patient support to have both drive wheels (40) and secondary wheels (48) to provide support to the frame of the propulsion device (since wheels, 48, are called support wheels at lines 21-22 of col. 3, they provide the benefit of what support wheels do, namely, providing support to the frame that they are attached to). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a pair of secondary wheels

on the propulsion device of '210, as taught by Keiboorns et al., in order to provide support to the frame of the propulsion device.

5. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Abstract 08-317953, hereafter '953, in view of Kieboorns et al.

'953 disclose a propulsion system "configured" to move a patient support having a patient restraint board, the propulsion system comprising: a propulsion device (Figures 24-28) "configured" to contact the floor to power movement of the patient support, a coupler "adapted" to couple the propulsion device to the patient support, the coupler being "adapted" to be coupled to the patient restraint board (Figure 28), wherein the coupler is "adapted" to couple to a base frame of the patient support (Figure 28) wherein the propulsion device includes a frame (Figures 26 & 28), a vertically extending handle (Figures 26 & 28), and the coupler includes a first member (72) "adapted" to be coupled to the patient restraint board and the vertically extending handle (Figures 26 & 28), wherein the vertically extending handle extends from the frame of the propulsion device to a height above the patient restraint board (Figure 26), and the coupler is "adapted" to couple to a top edge of the patient restraint board (Figure 28). '953 is silent as to the propulsion device having a pair of secondary wheels. Kieboorns et al. disclose that it is well know for a propulsion device that powers movement of a patient support to have both drive wheels (40) and secondary wheels (48) to provide support to the frame of the propulsion device (since wheels, 48, are called support wheels at lines 21-22 of col. 3, they provide the benefit of what support wheels do, namely, providing support to the frame that they are attached to). It would have been obvious to one of

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ordinary skill in the art at the time of the invention to provide a pair of secondary wheels on the propulsion device of '953, as taught by Keibooms et al., in order to provide support to the frame of the propulsion device.

6. Claims 8-9, 12-15 and 34-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over '210 in view of '953 and Kiebooms et al.

'210 disclose all of the claimed limitations (as stated in the 102(b) rejection above) except that the propulsion device has a pair of secondary wheels and that the propulsion device includes a motor coupled to the drive wheel. '953 disclose that a wheel of a propulsion system is motorized (25a & 25b are powered by 30a & 30b) in order to provide propulsion assistance to a human operator (an inherently recognizable benefit of motorized propulsion systems). Kiebooms et al. disclose that it is well know for a propulsion device that powers movement of a patient support to have both drive wheels (40) and secondary wheels (48) to provide support to the frame of the propulsion device (since wheels, 48, are called support wheels at lines 21-22 of col. 3, they provide the benefit of what support wheels do, namely, providing support to the frame that they are attached to). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the wheel of '210 is motorized, as taught by '953, in order to provide propulsion assistance to a human operator. and to provide a pair of secondary wheels on the propulsion device of '210, as taught by Kiebooms et al., in order to provide support to the frame of the propulsion device.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over '210 in view of '953 and Kiebooms et al.

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'210 disclose that the propulsion system including a vertically extending handle (15), wherein the propulsion system includes a frame (1, 4, 3, 5) and a wheel (2) coupled to the frame, the vertically extending handle being coupled to the frame (Figure 2) and the second member (10) is coupled to the vertically extending handle (Figure 2). '210 do not specifically disclose that the wheel is motorized or a pair of secondary wheels. '953 disclose that a wheel of a propulsion system is motorized (25a & 25b are powered by 30a & 30b) in order to provide propulsion assistance to a human operator (an inherently recognizable benefit of motorized propulsion systems). Kiebooms et al. disclose that it is well know for a propulsion device that powers movement of a patient support to have both drive wheels (40) and secondary wheels (48) to provide support to the frame of the propulsion device (since wheels, 48, are called support wheels at lines 21-22 of col. 3, they provide the benefit of what support wheels do, namely, providing support to the frame that they are attached to). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the wheel of '210 is motorized, as taught by '953, in order to provide propulsion assistance to a human operator, and to provide a pair of secondary wheels on the propulsion device of '210, as taught by Kiebooms et al., in order to provide support to the frame of the propulsion device.

***Allowable Subject Matter***

8. Claims 11, 30-33, 44 and 45 are allowed. The prior art fails to disclose a propulsion system including a vertically extending handle that is coupled to the frame

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and wherein a second member is slidably coupled to the vertically extending handle along with the rest of the recited limitations of claim 11. The prior art does not disclose a method of coupling a propulsion system to a patient support including the step of providing relative movement between the coupler and the patient restraint board such that the coupler and the perimetrical portion of the patient restraint board are coupled.

### ***Response to Arguments***

9. Applicant's arguments filed 04/20/05 have been fully considered but they are not persuasive.

#### **Argument #1 - Regarding Claim 21 (Page 8 of the Response Filed 04/20/05)**

Applicant first argues that the handle of the bed in Figures 24-28 of '953 is not substantially perpendicular to the horizontal plane of the bedframe. This limitation, as broadly recited (since claim limitations are interpreted in the broadest reasonable definition consistent with the specification), merely requires that any prior art handle be substantially (not completely) perpendicular to the horizontal plane of the bedframe. The handle, 69, of the '953 reference is therefore substantially perpendicular to the horizontal plane of the bedframe, especially when considered in connection with the upright view depicted in Figure 26.

#### **Argument #2 - Regarding Claim 8 (Page 10 of the Response Filed 04/20/05)**

The next argument is that the German reference is a non-powered device and fails to disclose a propulsion device to power movement of the patient support (this is also argued in connection with claim 34 on page 11, claim 8 on page 13, claim 34 on



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page 14 and claim 41 on page 15 of the response). This limitation is merely an intended use of the product recited in claim 8. Since an intended use must just be capable of performing the recited use function, an operator pushing the propulsion device would provide the requisite power. Applicants are certainly not claiming an automatically powered and navigated propulsion system attachable to a hospital bed and therefore any propulsion device that is not automatically powered and navigated would necessarily be steered and or operator power assisted. Furthermore, any propulsion device that is attachable to a hospital bed would be "to power movement" of that hospital bed, regardless of where the power source is.

Argument #3 - Regarding Claim 8 (Page 10 of the Response Filed 04/20/05)

The next argument is that the German reference fails to disclose drive wheels (this argument is also presented in connection with claim 34 on page 11, claim 8 on page 13, claim 34 on page 14 and claim 41 of page 15). As no further specificity other than the moniker "drive" have been given to the first set of wheels recited in claim 8, the wheels, 2, of the German reference have been interpreted as "drive" wheels.

Argument #4 - Regarding Claim 8 (Page 10 of the Response Filed 04/20/05)

In response to applicant's argument that there is no suggestion to combine the German and Kiebooms references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

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1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation comes from the references themselves, namely, from the secondary reference. The requisite motivational statement has already been supplied - namely that there would be motivation to so combine because an additional set of secondary wheels would add support to the frame of the propulsion device. This argument is again presented in connection with claim 16 on page 12, claim 8 on page 13, claim 34 on page 14 and claim 41 on page 15.

Argument #5 - Regarding Claim 8 (Pages 10-11 of the Response Filed 04/20/05)

In response to applicant's argument that the German reference and Kiebooms are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references are in the field of applicant's endeavor, namely, propulsion devices which are attachable to hospital beds.

Argument #6 - Regarding Claim 8 (Page 11 of the Response filed 04/20/05)

In response to applicant's argument that the combined device of the German reference and Kiebooms would be inoperative, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re*

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*Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The combined teachings of the references is that an extra set of secondary wheels may be supplied on a propulsion device attachable to a hospital bed to provide support to the frame of that very propulsion device. This argument is also presented in connection with claim 41 on page 15.

Argument #7 - Regarding Claim 16 (Page 12 of the Response filed 04/20/05)

The next argument is that the '593 reference does not disclose that the coupler is configured to be coupled to the patient restraint board. This limitation merely requires the capability to be coupled to the patient restraint board. In this respect, the coupler is configured to be coupled to the patient restraint board since it could be attached to the patient restraint board.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (571) 272-6648.

The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6612. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Matt Luby  
Examiner  
Art Unit 3611

M.I.  
June 30, 2005